

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1129/Del/2019

निर्धारणवर्ष/Assessment Year: 2015-16

BRIJ BHUSHAN PAWAN KUMAR C/o Pawan Kumar, Satsang Bhawan, FF, Malvia Nagar, Moradabad, Uttar Pradesh.	बनाम Vs.	ITO, Ward-2(1), Moradabad.
PAN No.AAIFB9554A		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by	Shri Mayank Patawari, CA
राजस्वकीओरसे / Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	02.07.2024
उद्घोषणाकीतारीख/ Pronouncement on	29.08.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals), Moradabad dated 10/12/2018 for the AY 2015-16. In the grounds of appeal the assessee challenged the order of the Ld.CIT(A) in sustaining the assessment made u/s 144 of the Act by applying the net profit rate at 8% on gross turnover.

2. Ld. Counsel for the assessee submits that the assessee firm was closed down in 2016 and later partner was passed away. Ld. Counsel submits that the assessee has shown average GP at 5.03%

and average net profit at 0.08% for the assessment years 2014-15 to 2016-17 and, therefore, there is no justification in estimating the profit at 8% applying section 44AD of the Act. Ld. Counsel further submitted that the turnover of the assessee is more than one crore and therefore provisions of section 44AD have no application to the assessee. Alternatively Ld. Counsel submits that the Assessing Officer should have allowed at least the indirect expenses.

3. Ld. DR strongly supported the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below. On perusal of the assessment order it is noticed that assessment was completed u/s 144 of the Act as the assessee could not respond to the notices. Best judgment assessment was made under 144 of the Act as assessee could not file the requisite details. The assessee contends that the action of the AO for estimating the income at 8% of turnover as per provisions of section 44AD since the provisions of section 44AD are not applicable on the assessee having turnover more than 1 crore. It is also the contention of the assessee that non maintenance of stock register cannot be the only basis for rejecting the books and estimating the profits at 8%. The turnover shown by the assessee for the assessment year under consideration is Rs.2,14,36,475/- and, therefore, the AO could not

have applied provisions for 44AD and estimated profit at 8%. It is also the finding of the AO that since the books and vouchers were not produced before him the income was estimated especially as stated by the auditor in column no.5 in 3CB report that maintenance of stock register is not plausible. Therefore, taking the totality of facts and circumstances into consideration to meet the ends of justice the AO is directed to estimate the income at 5% of gross turnover as against 8% and re-compute the income accordingly.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29/08/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29.08.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi